

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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STEPHEN NUCCIO,

Plaintiff,

- against -

7:13-CV-1556 (MAD) (TWD)

NICOLE DUVÉ, in her official capacity as District
Attorney of the County of Saint Lawrence, New York

**DECLARATION
OF JAMES M. MALONEY**

Defendant.

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JAMES M. MALONEY declares under penalty of perjury as follows:

1. I am the attorney for the Plaintiff in the above-captioned action. I submit this Declaration in opposition to the Defendant's motion to dismiss or stay this action.

2. I was first contacted by the Plaintiff, Mr. Nuccio, several weeks after he had been convicted (in late June 2013) of a misdemeanor for possession of nunchaku ("chuka sticks") in his home. I had not known or heard of Mr. Nuccio or of the prosecution against him before he first contacted me at that time.

3. I am the *pro se* plaintiff in a case currently captioned *Maloney v. Rice*, which has been on the federal docket since 2003, which has been appealed up as far as the United States Supreme Court (with the welcome assistance of the law firm of Kirkland & Ellis as *pro bono* counsel in preparing and filing the petition for *certiorari*) and then remanded by the Supreme Court to the Second Circuit and from there to the District Court, and which is currently pending before the United States District Court for the Eastern District of New York.

4. I am fortunate in that I have never been convicted of any crime, as has Mr. Nuccio, who has been convicted of misdemeanor possession of "chuka sticks" in his home. Because I have never been convicted of any crime, I have not, in the *Maloney v. Rice* litigation, maintained

my original (and admittedly not so well thought-out) challenge in that case to the provisions of New York Penal Law § 265.02, which treats possession of “chuka sticks” as a felony if the defendant “has been previously convicted of any crime.” Because I have never been convicted of any crime, I lack standing to challenge § 265.02 on my own behalf (although that provision is certainly being challenged in this case as it applies to my client). Attached hereto as Exhibit 1 is a true copy of the transcript of the October 24, 2013, status conference in *Maloney v. Rice*. This Court’s attention is respectfully directed to page 8, lines 4-17, wherein I make a concession as to my lack of standing to challenge § 265.02 and Judge Chen of the United States District Court for the Eastern District of New York acknowledges same.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 12, 2014



JAMES M. MALONEY